

ANNUAL REPORT  
OF THE  
CRIMINAL CODE EVALUATION COMMISSION



Indiana Legislative Services Agency  
200 W. Washington Street, Suite 301  
Indianapolis, Indiana 46204

December, 2012

# INDIANA LEGISLATIVE COUNCIL

## 2012

Senator David Long

Vice-Chairperson

Fort Wayne

Speaker Brian Bosma

Chairperson

Indianapolis

Senator Vi Simpson

Bloomington

Representative Linda Lawson

Hammond

Senator Brandt Hershman

Buck Creek

Representative Kathy Richardson

Noblesville

Senator Patricia Miller

Indianapolis

Representative William Friend

Macy

Senator Brent Steele

Bedford

Representative Eric Turner

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Senator James Merritt

Indianapolis

Representative Timothy Brown

Crawfordsville

Senator James Arnold

LaPorte

Representative Vanessa Summers

Indianapolis

Senator Timothy Lanane

Anderson

John M. Ross  
Executive Director  
Legislative Services Agency

# **CRIMINAL CODE EVALUATION COMMISSION**

## **Membership Roster**

### **Senators**

Richard Bray  
Martinsville

Randall Head  
Logansport

Greg Taylor  
Indianapolis

Lindel Hume  
Princeton

### **Representatives**

Ralph Foley, Chairperson  
Martinsville

Greg Steuerwald  
Avon

Linda Lawson  
Hammond

Matt Pierce  
Bloomington

### **Laymembers**

Judge John Marnocha

Professor Craig Bradley

Commissioner Bruce Lemmon

Larry Landis

Judge Lance D. Hamner

Attorney General Greg Zoeller

David Powell

Chief Justice Brent Dickson

### **Staff**

Sue Vansickle  
Staff Person for the Commission  
K.C. Norwalk  
Attorney for the Commission  
Andrew Hedges  
Attorney for the Commission  
Mark Goodpaster  
Fiscal Analyst for the Commission

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.

## **I. STATUTORY DIRECTIVE**

The Indiana General Assembly enacted Public Law 98 (2011), Public Law 180 (2011) and Public Law 229 (2011) creating the Criminal Code Evaluation Commission. The Commission is established to evaluate the criminal laws of Indiana and may make recommendations to the General Assembly for the modification of the criminal laws. The Indiana Criminal Justice Institute provides staff support to the Commission by preparing minutes and the final report, and the Legislative Services Agency provides the Commission with advice on legal matters, criminal procedures, legal research, and drafting potential legislation.

## **II. SUMMARY OF WORK PROGRAM**

During the past two years, the Commission met 17 times. The Commission met during the 2011 interim, on June 23, July 13, July 27, August 18, September 9, October 4, October 19, November 2, November 17, and December 16. During the 2012 interim, the Commission met on September 6, September 20, September 27, October 4, October 18, October 26, and October 31. All meetings were held at the State House in Indianapolis.

## **III. SUMMARY OF TESTIMONY**

For a more detailed account, minutes for the Commission can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>

### **June 23, 2011 Meeting**

#### **Data Analysis Workgroup**

Deborah Daniels, partner with Krieg Devault and former United States Attorney, spoke about the Data Analysis Work Group ("DAWG"). Ms. Daniels stated that DAWG intends to recommend a new sentencing structure for all felony classes to reduce recidivism and overcrowding of the corrections facilities. Ms. Daniels also described past efforts to reform sentencing laws.

### **July 13, 2011 Meeting**

#### **Theft and Property Crime Research**

Ms. Daniels gave a presentation regarding theft and property crimes.

### **July 27, 2011 Meeting**

#### **Theft and Property Crime Recommendations**

Ms. Daniels gave a presentation on theft and property crimes, including legislative recommendations. The Commission discussed the proposals recommended by Ms. Daniels and made the following decisions:

Recommendation # 1 - The members considered whether the language in IC 35-43-4-2 in which a person intends "... to deprive the other person of any part of (the

property's) value or use" should be removed from statute as superfluous. The members did not consider the language to be superfluous since removal of this language would permit a person to take another person's car for a joy ride with no legal repercussions. The vote was 13 to 0 to retain this language in the final draft.

Recommendation #2 - Dollar Threshold for Felony Theft: Under current law, Indiana is the only state without a dollar threshold for theft. The Commission members proposed making \$750 the threshold between theft as a misdemeanor and theft as a felony. The vote was 7 to 6 in favor.

Recommendation #3 - Criminal Conversion: The Commission members voted to remove IC 35-43-4-3. The vote was 9 - 3 to remove. The Commission members also voted to remove receiving stolen property language (IC 35-43-4-2 (b)) because it was redundant as well. The vote was 12 - 0 in favor.

Recommendation #4 - The Commission took no vote on aggregating theft offenses into one episode of theft.

Recommendation #5 - Developing a Method to Value Stolen Property: The Commission members took no action on this recommendation.

Recommendation #6 - Enhancement of Certain Thefts to Class D Felonies Regardless of Monetary Value or If Monetary Value Is less than \$750: The Commission voted 11 - 2 to enhance the offense to a Class D felony if the property is a firearm. An effort to enhance the misdemeanor theft to a Class D felony if the property is a motor vehicle failed by a 5 to 7 vote.

Language to enhance the theft charge to a Class D felony if the victim of the offense was at least 67 years of age or affected by mental illness, mental retardation, dementia, or other physical or mental incapacity also was not recommended. The Commission voted 7-6 to enhance the penalty to a Class D felony if the value of the property was at least \$750 or if the person had a prior unrelated conviction of theft or conversion.

Recommendation #7 - Monetary Threshold for Class C Felonies: The proposal to lower the monetary threshold for a Class C felony to \$25,000 from the current \$100,000 failed by a 5 to 7 vote. The proposal to reduce the threshold to \$50,000 from \$100,000 passed by a vote of 9 to 3.

Recommendation #8 - Conforming Changes to Burglary Statute and Arrest Powers for Law Enforcement Officers: The Commission members voted 12 - 0 to include these changes in the draft.

## **August 18, 2011 Meeting**

### **Rental Car Theft**

The Commission discussed whether the general provisions of IC 35-43-4-1 (b)(2)

were adequate to prosecute persons who fail to return rental cars in a timely manner and whether IC 35-43-4-3(d) could be repealed to streamline the criminal code. The Commission took no vote on this issue.

#### Sex Crimes and Sex Offenders

Dr. Adam Deming, Executive Director of the Indiana Sex Offender Management and Monitoring Program (SOMM), described the characteristics of sex offenders and the risk factors for recidivism.

#### Human Trafficking

David Miller, Legislative Director, and Abby Kuzma, Director of Consumer Protection, both with the Office of the Attorney General, spoke about the efforts undertaken by the National Association of Attorneys General to address the problems of human trafficking whenever major sports events and other events attract a large number of people, particularly men.

### **September 9, 2011 Meeting**

#### Sex Crimes and Sex Offenders

The Commission discussed several sex crimes and sex offender issues including child solicitation, the statute of limitation for sex crimes, enhanced penalties for sex crimes against children, and child trafficking.

Dr. Deming, SOMM, also discussed sex offender issues with the Commission, including sexually violent predators, civil commitment laws, and recidivism of individuals who commit sex crimes.

Randy Koester, Deputy Commissioner at the Department of Correction (DOC), gave testimony regarding the risk assessment procedure that the DOC is working on with the Indiana Judicial Center.

### **October 4, 2011 Meeting**

#### Consolidation of Definitions of the Criminal Code

Andrew Hedges, Senior Staff Attorney with the Legislative Services Agency, discussed a bill draft that would consolidate all crimes in a definition article within Title 35.

#### Review of Criminal Provisions in Title 4 and Title 5

Mr. Hedges and Inspector General David Thomas discussed bill draft options for the criminal provisions in Title 4 and Title 5.

#### Data Analysis Workgroup

Representative Foley told the Commission members that concerns had been raised about offender data used during the prior legislative session to estimate the effect that sentencing changes would have on future prison populations. Consequently, the DAWG was formed to ensure that the Commission and legislators would have valid

and reliable information on prison populations produced from sound methodology.

John von Arx, special consultant to the Governor, told Commission members that DAWG is examining the analysis from the previous year to ensure that terminologies have uniform definitions and DAWG would research the number of Class D offenders who spend less than 12 months in prison.

#### Research Group

Deborah Daniels gave a presentation to the Commission regarding sex crimes by felony level and alternative penalties for sex crimes.

### **October 19, 2011 Meeting**

#### Victim's Rights, Probation, and County-level Sentencing Options

Representative Foley presented PD 3294 for review by the Commission. This draft proposed:

- enhancing victim notification
- restricting persons convicted of a Class D felony from being committed to DOC unless the person has at least one year of an executed sentence remaining of the offender's sentence at the time of sentencing
- establishing a County Offender Fund in each county
- creating the County Offender Deferral Fee and the County Offender Diversion Fee
- a Probation Improvement Fund
- a Substance Abuse Treatment Fund
- requiring the Judicial Conference to adopt rules concerning swift and certain sanctions that a probation officer may use in supervising persons on probation
- requiring a sentencing court to inform DOC if the person sentenced is a credit restricted felon.

Tim Brown, Legislative Liaison for the DOC, presented information regarding DOC inmate releases and programming issues for short-term offenders.

K.C. Norwalk, Senior Staff Attorney, Legislative Services Agency, presented to the Commission members PD 3255, which consolidates criminal law definitions in Title 35.

Andrew Hedges, presented PD 3281 to the Commission members concerning human trafficking

Deborah Daniels discussed with the Commission members a proposal to classify drug crimes into six levels, with the idea that the penalties for drug crimes would have narrower ranges than they have under current law.

### **November 2, 2011 Meeting**

### Reentry Issues and Drug-free zones

Kelsey Kauffman of DePauw University gave a presentation regarding reentry issues and drug-free zones. Ms. Kauffman also described the problems that offenders on probation experience when they are required to pay user fees.

Gregg Keesling, President of RecycleForce, discussed issues that some of his company's employees who are ex-offenders face regarding court-ordered fees.

### Trends in Misdemeanor Diversions and Infraction and Ordinance Violation Deferrals

Mark Goodpaster, Senior Fiscal Analyst for the Commission, next spoke about the trends in misdemeanor diversions, and infraction and ordinance violation deferrals.

### Review of Preliminary Drafts

The Commission reviewed the following preliminary drafts:

- PD 3199 - Substance Abuse Treatment Fund
- PD 3198 - Probation Improvement Fund
- PD 3012 - Sentencing Disclosure and Victim Notification
- PD 3202 - Victim Rights
- PD 3200 - Class D Felony Sentencing
- PD 3203 - Credit Restricted Felons
- PD 3201 - Probation Sanctions
- PD 3197 - County Offender Fund
- PD 3255 - Definitions in Title 35

## **November 17, 2011 Meeting**

### Review of Preliminary Drafts

The Committee considered bill drafts at this meeting. The descriptions of the drafts and the votes are reflected in SECTION V.

## **December 16, 2011 Meeting**

### Revisions to Titles 4 and 5

Inspector General David Thomas presented to the Commission a proposed bill draft making revisions to Titles 4 and 5 of the Indiana Code. He stated that this bill moves criminal provisions into two new articles in Title 35 and reorganizes these penalties into four general sections that are easier to understand than in their current organization. The Commission voted 13-0 that this bill be introduced.

### Child Solicitation

Senator Head presented a bill concerning child solicitation. The Commission members voted 5-8 to not recommend introduction of this bill.

## **September 6, 2012 Meeting**

### Indiana Department of Correction Inmate Population



Randy Koester and Aaron Garner, Director of Research and Planning at DOC, gave a presentation on prison population statistics and recent DOC population trends.

Data Analysis Workgroup

G. Roger Jarjoura and Thomas D. Stucky gave a presentation concerning low level felony incarceration and sentencing and provided the Commission with a report.

**September 20, 2012 Meeting**

Proposed Changes to Title 35

Deborah Daniels gave a report and background of the Criminal Code Evaluation Commission Workgroup and gave a presentation concerning proposed changes to Title 35.

**September 27, 2012 Meeting**

Sentencing Issues

Deborah Daniels made a presentation containing the Criminal Code Evaluation Commission Workgroup's recommendations with respect to sentencing issues.

**October 4, 2012 Meeting**

Probation Issues

Don Travis, President of the Probation Officers' Professional Association of Indiana, discussed probation funding shortfalls in Indiana.

Protection Zones

Kelsey Kauffman, of DePauw University, and Bernard Carter, Lake County Prosecuting Attorney, discussed protection zones with the Commission. Ms. Kauffman suggested that the Commission reduce protection zones or eliminate them, while Mr. Cater suggested keeping protection zones intact.

**October 18, 2012 Meeting**

Drafting Updates

Deborah Daniels updated the Commission on the proposals that the Workgroup is proposing, including criminal gang activity, sentencing, and education credit time,

KC Norwalk discussed PD 3375, which expands rape to include rape between the same sexes and renames criminal deviate conduct to nonconsensual sexual conduct. Mr. Norwalk also discussed PD 3338, which makes changes to protection zones.

Andrew Hedges discussed a proposed habitual offender draft.

**October 26, 2012 Meeting**

Review of Preliminary Drafts

K.C. Norwalk and Andrew Hedges discussed portions of PD 3425 concerning: (1) criminal gang activity; (2) credit time; (3) battery; (4) habitual offender proceedings;

(5) rape; (6) protected zones; and (7) manufacturing marijuana.

Presentation by the Indiana Prosecuting Attorneys Council

Steve Johnson, former Executive Director of the Indiana Prosecuting Attorneys Council (IPAC), testified concerning the history of criminal code revisions in Indiana. Grant County Prosecuting Attorney Jim Luttrell, chairperson of IPAC's Legislative Committee, testified concerning IPAC's sentencing recommendations.

Presentation by the Indiana Public Defender Council

Larry Landis, Executive Director of the Indiana Public Defender Council, testified concerning the factors the legislature should consider in determining appropriate sentences.

**October 31, 2012 meeting**

Consideration of PD 3458

K.C. Norwalk and Andrew Hedges discussed portions of PD 3458 concerning: (1) the Habitual Offender Statute; (2) Drug Crimes; (3) Community Corrections; (4) Suspended Sentences; (5) Rape and criminal deviate conduct; (6) Criminal Gang Activity; (7) Protection Zones; (8) Murder; and (9) Earned Credit Time. Mark Goodpaster discussed fiscal implications of the bill draft. The Commission discussed the bill draft, made amendments to the draft, and voted to approve the draft 13-1 in a roll call vote.

Department of Correction Presentation

Randy Koester of DOC gave a PowerPoint presentation concerning the components of a felony sentence, how the DOC uses credit time, the difference between the use of credit presently as opposed to Commission proposals, and the growth projections for commitments to DOC.

Consideration of Final Report

The Commission voted 14-0 to approve the final report.

**IV. COMMITTEE FINDINGS AND RECOMMENDATIONS**

The Commission made the following findings of fact:

While the Commission believes that the legislation it has prepared represents the best approach to deal with the charges assigned to the Commission, the Commission recognizes the draft is a work in progress and the Commission's work may be improved through the legislative process.

The Commission made the following recommendations:

- (1) That the General Assembly determine appropriate sentencing ranges for the new felony classifications set forth in PD 3458.
- (2) That the General Assembly consider amending the habitual offender and habitual

substance offender statutes.

(3) That the General Assembly consider amending the Indiana Code regarding the restorative good time process in the DOC.

The Commission recommended the following legislative drafts:

### **2011 Bill Drafts**

#### (1) PD 3255 (2011 interim): Reorganization of Title 35

PD 3255 reorganizes definitions in Title 35 and makes technical corrections.

The Commission voted 12-0 to recommend introduction of this bill in the 2012 General Assembly.

#### (2) PD 3481 (2011 interim) : Probation Improvement Fund

PD 3481 establishes the Probation Improvement Fund administered by the Indiana Judicial Conference to award grants based on the recommendation by the Department of Correction.

The Commission voted 9-5 to recommend introduction of this bill in the 2012 General Assembly.

#### (3) PD 3499: Forensic Addiction Fund

PD 3499 creates the Forensic Addiction Fund as a funding source for grants to probation departments and community corrections programs to increase substance abuse treatment access for individuals on probation or in a community corrections program.

The Commission voted 13-0 to recommend introduction of this bill in the 2012 General Assembly.

#### (4) PD 3201: Probation and Parole Sanctions

PD 3201 requires the Indiana Judicial Conference to adopt rules concerning swift and certain sanctions that a probation officer may use in supervising persons on probation. It also creates procedures that probation officers can use to sanction persons on probation.

The Commission voted 10-2 to recommend introduction of this bill in the 2012 General Assembly.

#### (5) PD 3501: Notification Regarding Credit-restricted Felons

PD 3501 requires a sentencing court to inform the Department of Correction if the person sentenced is a credit-restricted felon. It also requires a court that sentences a person as a credit-restricted felon to state in the sentencing order and the abstract of judgment that the person is a credit-restricted felon.

The Commission voted 12-0 to recommend introduction of this bill in the 2012 General Assembly.

(6) PD 3434: Victim Notification System

PD 3434 requires the Department of Correction to: (1) establish an automated victim notification system; and (2) notify a registered crime victim of changes in a committed offender's facility location and date of release if the offender was sentenced for committing a crime against the victim.

The Commission voted 11-1 to recommend introduction of this bill in the 2012 General Assembly.

(7) PD 3442: Postconviction Release/Community Transition Program and Earned Credit Time

PD 3442 requires that credit time earned by certain offenders shall be reduced if application of the credit time would result in postconviction release or a community transition program assignment in less than 45 days after the person earns the credit time.

The Commission voted 9-3 to recommend introduction of this bill in the 2012 General Assembly.

(8) Revisions to Title 4 and 5 Draft

This draft moves criminal provisions from Title 4 and 5 into two new articles in Title 35.

The Commission voted 13 to 0 to recommend that this bill be introduced into the 2012 General Assembly.

**2012 Bill Drafts**

(9) PD 3458: Changes to Sentencing and Changes to Criminal Provisions

This draft changes felony sentencing to 6 ranges of sentences and makes numerous changes to criminal statutes.

The Commission voted 13-1 to recommend introduction of this bill in the 2013 General Assembly.

**Final Report**

The Commission approved this final report in a 14-0 roll call vote.

## WITNESS LIST

### June 23, 2011 Meeting

Deborah Daniels, Krieg Devault, LLP

### July 13, 2011 Meeting

Deborah Daniels, Krieg Devault, LLP

### July 27, 2011 Meeting

Deborah Daniels, Krieg Devault, LLP

### August 18, 2011 Meeting

Dr. Adam Deming, Executive Director of the Indiana Sex Offender Management and Monitoring Program (SOMM)

Abby Kuzma, Director of Consumer Protection, Office of the Attorney General

David Miller, Legislative Director, Office of the Attorney General

Det. Darren O'Dier, Indianapolis Metropolitan Police Department

### September 9, 2011 Meeting

Andrew Cullen, Legislative Liaison, Indiana Public Defender Council

Deborah Daniels, Krieg Devault, LLP

Dr. Adam Deming, Executive Director of the Indiana Sex Offender Management and Monitoring Program (SOMM)

Randy Koester, Deputy Commissioner of Reentry, Indiana Department of Correction

### October 4, 2011 Meeting

Deborah Daniels, Krieg Devault, LLP

Andrew Hedges, Senior Staff Attorney, Legislative Services Agency

Randy Koester, Deputy Commissioner of Reentry, Indiana Department of Correction

David Thomas, Office of the Inspector General

John von Arx, Special Consultant to the Governor

### October 19, 2011 Meeting

Tim Brown, Director of Legislative Affairs, Indiana Department of Correction

Andrew Hedges, Senior Staff Attorney, Legislative Services Agency

David Miller, Office of the Attorney General

K.C. Norwalk, Senior Staff Attorney, Legislative Services Agency

### November 2, 2011 Meeting

Steve Covey

Mark Goodpaster, Senior Fiscal Analyst, Legislative Services Agency

Kelsey Kauffman, DePauw University

Gregg Keesling, President, RecycleForce

Michael Ross

December 16, 2011

David Thomas, Office of the Inspector General

September 6, 2012 Meeting

Tim Brown, Director of Legislative Affairs, Indiana Department of Correction  
Aaron Garner, Director of Research and Planning, Indiana Department of Correction

G. Roger Jarjoura, Principal Researcher, American Institutes for Research  
Randy Koester, Deputy Commissioner of Reentry, Indiana Department of Correction

Thomas Stucky, Associate Professor, Department of Criminal Justice, IUPUI

September 20, 2012 Meeting

Deborah Daniels, Krieg Devault, LLP

September 27, 2012 Meeting

Tim Brown, Director of Legislative Affairs, Indiana Department of Correction  
Deborah Daniels, Krieg Devault, LLP

Andrew Hedges, Senior Staff Attorney, Legislative Services Agency

David Powell, Executive Director, Indiana Prosecutors Attorneys Council

October 4, 2012 Meeting

Don Travis, Probation Officers' Professional Association of Indiana

Kelsey Kaufman, DePauw University

Bernard Carter, Lake County Prosecuting Attorney

October 18, 2012 Meeting

Deborah Daniels, Krieg Devault, LLP

K.C. Norwalk, Legislative Services Agency

Andrew Hedges, Legislative Services Agency

October 26, 2012 Meeting

Deborah Daniels, Krieg Devault, LLP

Mark Goodpaster, Senior Fiscal Analyst, Legislative Services Agency

Andrew Hedges, Senior Staff Attorney, Legislative Services Agency

Steve Johnson, former Executive Director, Indiana Prosecuting Attorneys Council

Chad Lewis, Jefferson County Prosecutor

Jim Luttrell, Grant County Prosecutor

Aaron Negangard, Dearborn/Ohio County Prosecutor

K.C. Norwalk, Senior Staff Attorney, Legislative Services Agency

Susan O'Malley, Indiana Prosecuting Attorneys Council

Andrew Phelps, Indiana Prosecuting Attorneys Council

David Powell, Executive Director, Indiana Prosecutors Attorneys Council

October 31, 2012 Meeting

Mark Goodpaster, Fiscal Analyst, Legislative Services Agency  
Andrew Hedges, Senior Staff Attorney, Legislative Services Agency  
K.C. Norwalk, Senior Staff Attorney, Legislative Services Agency  
Randy Koester, Indiana Department of Correction